Supreme Court of the United States.

OCTOBER TERM, 1900.

No. , *Original.*

EX PARTE: IN THE MATTER OF THE PETITION OF THE WILDER'S STEAMSHIP COMPANY FOR WRIT OF MANDAMUS

vs.

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, THE HONORABLES WILLIAM B. GILBERT, ERSKINE M. ROSS, WILLIAM W. MORROW, JUDGES THEREOF, RESPONDENTS.

To the Honorable the Supreme Court of the United States:

The petition of The Wilder's Steamship Company, a corporation organized and existing under the laws of the Territory of Hawaii, respectfully shows to this honorable court:

1. That it is the owner of steamships and vessels operating in the waters adjacent to the Hawaiian islands.

2. That on the night of the 27th day of December, A. D. 1899, the steamer "*Claudine*," one of petitioner's steamships,

collided with the barkentine "*William Carson*," claimed to be owned, together with the cargo therein, by George U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, William Carson, H. D. Bendixen, James H. Nelson, M. O. Siverson, F. O. Johansen, George A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry M. Wetherbee.

3. That thereafter, on the 5th day of February, A. D. 1900, said persons, as owners of the said barkentine and cargo, filed their libel in admiralty against your petitioner in the circuit court of the first judicial circuit of the Republic of Hawaii, claiming damages in the sum of $64,000.

4. That while said cause was pending in said circuit court of the first judicial circuit of the Republic of Hawaii, viz., on April 30, 1900, a certain act of the Congress of the United States was passed and approved, entitled "An act to provide a government for the Territory of Hawaii," and said act by the terms thereof took effect forty-five days from and after the approval thereof, viz., on June 15, 1900.

5. That thereafter, after the passage of said act of Congress, but before it took effect, said cause came on regularly to be heard, and on the 7th day of May, A. D. 1900, a decree was rendered in said cause against your petitioner in the sum of $55,000, said decree being as follows, viz:

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT, HAWAIIAN ISLANDS, ISLAND OF OAHU.

GEORGE U. HIND, C. A. SPRECKELS, RUDOLPH SPRECKELS, G. WEMPE, WILLIAM CARSON, H. D. BENDIXEN, JAMES H. NELSON, M. O. SIVERSON, N. J. McLEOD, G. M. FAGERLUND, J. S. HELLIGEN, JOHN PILTZ, and HENRY M. WETHERBEE

vs.

WILDER'S STEAMSHIP COMPANY (a Corporation).

Decree.

The above-entitled cause having come on to be heard in the regular course upon the calendar of this court on the 9th day of April, A. D. 1900, before the Hon. R. D. Silliman, acting circuit judge, and documentary and other evidence having been adduced at the trial of said cause by the libelants and libelee respectively, after hearing the argument by counsel for the respective parties, and due deliberation having been had, and the court having rendered and filed its opinion herein:

Now, upon motion of Paul Neumann, proctor for the libelants, it is considered, ordered, and adjudged that the loss of the barkentine "*William Carson*" was caused by the collision between the steamship "*Claudine*" and said barkentine "*William Carson*," and that said loss was occasioned without fault, privity, or knowledge of the libelants.

That the respondent, Wilder's Steamship Company, is the owner of the said steamship "*Claudine*."

That said loss and disaster occasioned by said collision on the 27th day of December, A. D. 1899, which resulted in the total loss of the said barkentine "*William Carson*," occurred without any fault or negligence on the part of those in charge of the said barkentine "*William Carson*," and that the value of said barkentine at the time of the loss was $55,000.

It is therefore ordered, adjudged, and decreed that Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, William Carson, H. D. Bendixen, Jas. H. Nelson, M. O. Siverson, F. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fageriund, J. S. Helligen, John Piltz, and Henry M. Wetherbee, the libelants herein, have and recover of the respondent, Wilder's Steamship Company, the sum of $55,000 and their costs and disbursements in this action incurred and taxed by the clerk of this court at $657.60, and that execution issue to enforce the satisfaction of this decree.

Dated at Honolulu, May 7th, A. D. 1900.

(Signed) GEO. A. DAVIS,
Acting First Circuit Judge of the First Judicial Circuit.

Approved as to form.
K., B. & Mc.

From which decree your petitioner made and perfected its appeal to the supreme court of the Republic of Hawaii, as provided by the then existing law of said Republic.

6. That section 10 of said act of Congress provides, so far as it relates to this matter, as follows, viz:

"SEC. 10. That all rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this act shall continue to be as effectual as if this act had not been passed. * * * All criminal and penal proceedings then pending in the courts of the Republic of Hawaii shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii; all such proceedings, all actions at law, suits in equity, and other proceedings then pending in the courts of the Republic of Hawaii shall be carried on to final judgment and execution in the corresponding courts of the Territory of Hawaii; and all process issued and sentences imposed before this act takes effect shall be as valid as if issued or imposed in the name of the Territory of Hawaii." * * *

7. That thereafter said cause on appeal came on regularly to be heard before the supreme court of the Territory of Hawaii, and on the 25th day of October, A. D. 1900, said supreme court rendered its decision in said cause, awarding damages against your petitioner in the sum of $54,630.75.

8. That in accordance with said decision a final decree of said supreme court was made and entered on the 9th day of November, A. D. 1900, said decree being as follows, viz:

IN THE SUPREME COURT OF THE TERRITORY OF HAWAII, SEPTEMBER TERM, 1900.

GEO. U. HIND, C. A. SPRECKELS, RUDOLPH SPRECKLES, G. WEMPE, WM. CARSON, H. D. BENDIXEN, JAS. H. NELSON, M. O. SIVERSEN, F. O. JOHANSEN, GEO. A. NELSON, N. J. MCLEOD, G. M. FAGERLUND, J. S. HELLINGSEN, JOHN PILTZ, and HENRY M. WETHERBEE, *Libelants and Appellees*,

vs.

WILDER'S STEAMSHIP COMPANY (a Corporation), *Libelee and Appellant.*

Decree.

This cause, an action for damages through collision between the steamship "*Claudine*," owned by the appellant, and the barkentine "*William Carson*," owned by the appellees, having come on for hearing on appeal before this court in its regular order upon the calendar:

Now, after said hearing and upon due consideration of all the matters involved in said appeal—

It is ordered, adjudged, and decreed that the judgment, order, and decree of the circuit judge of the first circuit, sitting in admiralty in this cause, be, and the same is hereby, approved and affirmed.

That the libelants Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Ben-

dixen, Jas. H. Nelson, M. O. Siversen, J. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry M. Wetherbee have and recover from the libelee, Wilder's Steamship Company, the sum of fifty-five thousand dollars in lawful money of the United States, with interest thereon at the rate of six per centum per annum, and their costs and disbursements in said action incurred, taxed at $623.60; that from said judgment be deducted the sum of five hundred and fifty dollars, realized from the sale of the wreck of the "*William Carson*," less the amount of the costs of the said sale, taxed by the clerk at the sum of $180.75, making the total of said deduction the sum of $369.25, and the total amount of the judgment awarded the sum of $54,630.75, with interest, as aforesaid, from May 1st, A. D. 1900, and the sum of $623.60 costs.

(Signed) W. F. FREAR.
(Signed) A. PERRY.

9. That thereafter, to wit, on November 9, 1900, your petitioner herein gave due notice of its intention to appeal said cause to the United States circuit court of appeals for the ninth circuit, and upon the same day duly filed its notice of appeal and petition of appeal and assignment of errors.

10. That thereafter, to wit, on November 10, 1900, your petitioner, having received from the clerk of the supreme court of the Territory of Hawaii a certificate to the effect that the assignment of errors and petition of appeal had been duly filed, moved the said court to fix the amount of bond to stay execution, pending appeal in said cause; which motion, having been duly filed and presented to the said supreme court of the Territory of Hawaii, said court, on November 11, 1900, refused to grant.

11. That thereafter, to wit, on November 12, 1900, your petitioner, by its attorneys, Kinney, Ballou & McClanahan, procured from Paul Neumann, proctor for libelants in said cause, a stipulation as to bond, and thereafter, in accordance with said stipulation, a bond staying execution was executed by your petitioner; and thereafter, on November 30, 1900, your petitioner filed in the office of the clerk of the said United States circuit court of appeals for the ninth circuit said stipulation and bond, together with its petition for allowance of appeal in said cause to said court, and a certified copy of said petition, stipulation, and bond, under the seal of said court, is attached hereto and made a part hereof and marked Exhibit A.

12. That thereafter your petitioner by its attorneys presented said stipulation and bond and petition for appeal to the said United States Circuit Court of Appeals for the Ninth Circuit and moved for allowance of an appeal to said Court and for the approval of bond on appeal, whereupon on, to wit, April 1, 1901, said Court denied said motion, holding that it was without jurisdiction to entertain said appeal and on the same day entered an order to that effect. And a copy of said order, together with the opinion of the Court, all duly certified under the seal of said Court, is hereto attached and made a part hereof and marked Exhibit B.

13. That section 15 of the Act of Congress approved March 3, 1891, entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," provides in part as follows, viz:

"SEC. 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those

provided for in the preceding section of this act, unless otherwise provided by law,

"And the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws and in admiralty cases."

14. That section 15 of said Act of March 3, 1891, provides as follows:

"SEC. 15. That the circuit court of appeal in cases in which the judgments of the circuit courts of appeal are made final by this act shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of the several Territories as by this act they may have to review the judgments, orders, and decrees of the district court and circuit courts; and for that purpose the several Territories shall, by orders of the Supreme Court, to be made from time to time, be assigned to particular circuits."

And your petitioner is informed and believes that shortly after the passage of said Act, to wit, on May 11, 1891, this Honorable Court did assign to appropriate judicial circuits the several Territories of the United States then existing, but that the Territory of Hawaii, not being then in existence, was not included in said assignment nor has it yet been so assigned.

15. That section 1891 of the Revised Statutes of the United States provides as follows:

"SEC. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States."

16. That section 5 of said Act of April 30, 1900, organizing the Territory of Hawaii provides as follows:

"SEC. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: Provided, That sections eighteen hundred and fifty and eighteen hundred and ninety of the Revised Statutes of the United States shall not apply to the Territory of Hawaii."

17. That by section 6 of said Act approved April 30, 1900, it is provided that the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force subject to repeal or amendment by the Legislature of Hawaii or the Congress of the United States; and that by section 7 of said Act said laws of Hawaii so far as they relate to maritime matters were repealed.

18. That your petitioner, therefore, claims that after said Act approved April 30, 1900, became effective, whatever jurisdiction in admiralty was exercised by the Supreme Court of the Territory of Hawaii was the admiralty jurisdiction of the United States and that, inasmuch as said jurisdiction is within the express terms of said sections 6 and 15 of said Act of March 3, 1891, your petitioner had a right to take its appeal from the final decree of said Supreme Court of the Territory of Hawaii to a Circuit Court of Appeals of the United States, and that the fact that said Territory has not yet been formally assigned to one of the judicial circuits of the United States does not impair or destroy the right of your petitioner in the premises.

19. That section 86 of said Act, approved April 30, 1900, is as follows, viz:

"SEC. 86. That there shall be established in said Territory a district court to consist of one judge, who shall reside

therein and be called the district judge. The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint a district judge, a district attorney, and a marshal of the United States for the said district, and said judge, attorney, and marshal shall hold office for six years unless sooner removed by the President. Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court; and said judge, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States. Writs of error and appeals from said district court shall be had and allowed to the circuit court of appeals in the ninth judicial circuit in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeals as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."

And your petitioner avers that by said Act all jurisdiction in admiralty was taken away from the other courts of the Territory of Hawaii and lodged in the district court provided for in said section, and that therein provision was made for appeals in admiralty causes to said United States Court of Appeals for the Ninth Circuit, but that your petitioner is not advised that said district court took jurisdiction of admiralty causes pending at the date when said Act became effective, in view of the provisions of section 10 of said Act hereinbefore set out.

20. Your petitioner further avers that there is, as it is advised by its counsel and as it verily believes, substantial error in the proceedings in said cause and in the decree rendered therein in said Circuit Court of the First Judicial Circuit of the Republic of Hawaii, and also in the decision of said Supreme Court of the Territory of Hawaii affirming said decree, and also in the opinion and order of said United States Circuit Court of Appeals for the Ninth Circuit, denying said petition and motion for allowance of appeal, whereby the substantial rights of your petitioner as appellant therein were and are materially and adversely affected, and if said decree is permitted to become final, as against your petitioner, and as appellant therein, an irreparable injury and injustice will be done to your petitioner; and your petitioner further states that it is entirely without remedy in the premises unless it is conferred by the interposition of this Honorable Court. Nor is this application either for annoyance or delay, but that petitioner's rights may be protected, errors in said cause by said above-named courts corrected, and justice done your petitioner in the premises. That the amount in controversy in said cause is largely in excess of five thousand dollars, exclusive of costs.

21. That owing to the refusal of said United States Circuit Court of Appeals for the Ninth Circuit to take jurisdiction of said cause your petitioner is exposed to great danger of irreparable loss and injury, inasmuch as proceedings in execution of said final decree of said Supreme Court of the Territory of Hawaii are only restrained by the stipulation and bond hereinbefore referred to, upon which said Circuit Court of Appeals has refused to allow an appeal; which danger can only be averted by a stay of proceedings ordered by this Honorable Court pending its consideration of the matters herein set out.

Wherefore your petitioner humbly prays that an order may issue out of this honorable court assigning, under section 15 of the act of March 3, 1891, the Territory of Hawaii to the ninth circuit; and in order that the steps heretofore taken by petitioner in its attempted appeal to the United States Circuit Court of Appeals for said Ninth Circuit may be effective, your petitioner further prays that a *nunc pro tunc* order may so issue as of date June 15, 1900, as being the date at which the act to provide a government for the Territory of Hawaii went into effect.

And therefore your petitioner further humbly prays that a writ of mandamus in due form may issue herein, directed to the said United States Circuit Court of Appeals for the Ninth Circuit and to the Honorable Judges thereof, the Honorable William B. Gilbert, Erskine M. Ross, and William W. Morrow, commanding and enjoining them to set aside said order of said Court made and entered in said cause on the first day of April, A. D. 1901, as aforesaid, denying said petition and motion for allowance of appeal of your petitioner as appellant therein, and to entertain said cause in said United States Circuit Court of Appeals for the Ninth Circuit and to hear and decide the same on its merits, and for such other and further relief as your petitioner may be entitled to by virtue of the premises, and for his reasonable costs and disbursements herein; and that, pending the consideration hereof and such further proceedings as may be had in this Honorable Court, all proceedings in said cause may be stayed, to the end that your petitioner may have full and perfect relief in the premises; and as in duty bound your petitioner will ever pray.

DUANE E. FOX,
For the Wilder's Steamship Company.

KINNEY, BALLOU & MCCLANAHAN,
NATHAN H. FRANK,
Proctors for the Petitioner.

DISTRICT OF COLUMBIA, *ss:*

I, Duane E. Fox, being first duly sworn, do depose and say that I am one of the counsel for the petitioner herein, that I have read the foregoing petition by me subscribed, and that the facts therein stated are true.

Duane E. Fox.

Subscribed and sworn to before me this 12th day of April, 1901.

[SEAL.] JOHN W. BRAWNER,
Notary Public.

EXHIBIT A.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH JUDICIAL CIRCUIT. IN ADMIRALTY.

GEO. U. HIND, C. A. SPRECKELS, RUDOLPH SPRECKELS, G. WEMPE, WM. CARSON, H. D. BENDIXEN, JAS. H. NELSON, M. O. SIVERSEN, F. O. JOHANSEN, GEO. A. NELSON, N. J. MCLEOD, G. M. FAGERLUND, J. S. HELLINGSEN, JOHN PILTZ, and HENRY M. WETHERBEE, *Libelants and Appellees,*

vs.

WILDER'S STEAMSHIP COMPANY (an Hawaiian Corporation), *Respondent and Appellant.*

Petition and Stipulation for Approval of Bond, etc.

To any Judge of the Circuit Court of Appeals of the Ninth Judicial Circuit:

Comes now your petitioner, The Wilder Steamship Company, a Hawaiian corporation, and respectfully represents:

I.

That on November 9th, A. D. 1900, a decree in the above-entitled case was entered by the supreme court of the Territory of Hawaii, being the highest court of record in said

Territory, for the libelants therein in the following language:

"That the libelants, George U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Bendixen, Jas. H. Nelson, M. O. Siversen, F. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry M. Wetherbee, have and recover from the libelee, Wilder Steamship Company, the sum of fifty-five thousand dollars ($55,000), in legal money of the United States, with interest thereon at the rate of six per cent. per annum, and their costs and disbursements in said action incurred, taxed at $623.60.

"That from the said judgment be deducted the sum of $550, realized from the sale of the wreck of the '*William Carson*,' less the amount of the costs of the said sale, taxed by the clerk at the sum of $180.75, making the total of said deduction, the sum of $369.25 and the total amount of the judgment awarded the sum of $54,630.75, with interest as aforesaid from May 1st, 1900, and the sum of $623.60, costs."

II.

That thereafter, to wit, upon November 9th, A. D. 1900, your petitioner herein, libelee in the above-entitled case, gave due notice of its intention to appeal said case to the circuit court of appeals for the ninth judicial circuit, and upon the same day duly filed its notice of appeal and petition of appeal and assignment of errors.

III.

That thereafter, to wit, upon November 10th, A. D. 1900, your petitioner, the libelee in the above-entitled cause, having received from the clerk of the supreme court of the Territory of Hawaii a certificate to the effect that the assignment of errors and petition of appeal had been duly filed, moved the supreme court of the Territory of Hawaii to fix the amount of bond to stay execution, pending appeal in the above-entitled cause, which motion having been duly

filed and presented to the said supreme court of the Territory of Hawaii they refused to grant.

IV.

That thereafter, to wit, upon November 12th, 1900, your petitioner herein, acting by its attorneys, Kinney, Ballou & McClannahan, procured from Mr. Paul Neumann, attorney for libelants in the above-entitled cause, a stipulation, a copy of which is hereto annexed, to the effect that a bond in the sum of one hundred and ten thousand dollars ($110,000), with the Wilder Steamship Company as principal and William C. Wilder and William G. Brash, both residents of Honolulu, Territory of Hawaii, would be acceptable to him.

Wherefore, your petitioner prays that your honor will approve of the said bond, both as to the amount and as to the sureties thereon.

WILDER STEAMSHIP COMPANY,
By its attorneys, KINNEY, BALLOU & MCCLANAHAN.
H. A. B.

CIRCUIT COURT OF APPEALS FOR THE NINTH JUDICIAL CIRCUIT. IN ADMIRALTY.

GEORGE U. HIND, C. A. SPRECKELS, RUDOLPH SPRECKELS, G. WEMPE, WM. CARSON, H. D. BENDIXEN, JAS. H. NELSON, M. O. SILVERSEN, F. O. JOHANSEN, GEO. A. NELSON, N. J. MCLEOD, G. M. FAGERLUND, J. S. HELLINGSEN, JOHN PILTZ, and HENRY WETHERBEE, *Libelants and Appellees*,

vs.

WILDER'S STEAMSHIP COMPANY (an Hawaiian Corporation), *Respondent and Appellant.*

Stipulation as to Bond.

It is hereby stipulated and agreed by and between the respective counsel and proctors in the above-entitled cause that the bond to stay execution in the above-entitled cause

may be drawn in the sum of one hundred and ten thousand ($110,000) dollars, with the Wilder's Steamship Company, an Hawaiian corporation, as principal, and William C. Wilder and William G. Brasch as sureties thereon; and that the filing of such bond may, until the right of appeal in this present cause shall have been settled by competent authority, have the same effect as to the staying of execution in the above-entitled cause as if said bond had been regularly fixed and approved by a justice either of the supreme court of the Territory of Hawaii or of the circuit court of appeals of the ninth judicial circuit.

Honolulu, November 12, A. D. 1900.

(Sig.) PAUL NEUMAN, *Proctor for Libelants.*
KINNEY, BALLOU & MCCLANAHAN,
Proctors for Respondent.

(Endorsed:) Circuit court of appeals, ninth judicial circuit. Geo. U. Hind *et al. vs.* Wilder's Steamship Co., a corporation. Stipulation. Kinney, Ballou & McClanahan.

(Endorsed:) 662. United States court of appeals, ninth judicial court. Geo. U. Hind *et al. vs.* Wilder's Steamship Co. (a corporation). Petition and stipulation for approval of bond, etc. Filed November 30, 1900. F. D. Monckton, clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH JUDICIAL CIRCUIT. IN ADMIRALTY.

GEORGE U. HIND, C. A. SPRECKELS, RUDOLPH SPRECKELS, G. WEMPE, WILLIAM CARSON, H. D. BENDIXEN, JAMES H. NELSON, M. O. SIVERSEN, F. O. JOHANSEN, GEORGE A. NELSON, N. J. McLEOD, G. M. FAGERLUND, J. S. HELLINGSEN, JOHN PILTZ, and HENRY M. WETHERBEE, *Libelants and Appellees,*

vs.

WILDER'S STEAMSHIP COMPANY (an Hawaiian Corporation), *Respondent and Appellant.*

Bond Staying Execution.

Know all men by these presents that we, The Wilder Steamship Company, a corporation organized, existing, and doing business under the laws of the Territory of Hawaii, in the city of Honolulu, Territory of Hawaii, as principal, and we, William C. Wilder and William G. Brash, both residents of Honolulu, Territory of Hawaii, as sureties, are held and firmly bound unto Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Bendixen, Jas. H. Nelson, M. O. Siversen, F. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry M. Wetherbee in the sum of two hundred and fifty (250) dollars, and in the further sum of one hundred and ten thousand (110,000) dollars, to be paid unto the said Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Bendixen, Jas. H. Nelson, M. O. Siversen, F. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry M. Wetherbee, their heirs, executors, administrators, and assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, execu-

tors, and administrators, jointly and severally by these presents.

The condition of the foregoing obligation is as follows: That whereas the Wilder Steamship Company, as libelee in the above-mentioned cause, has appealed to the United States circuit court of appeals for the ninth judicial circuit from a decree of the supreme court of the Territory of Hawaii, bearing date the 9th day of November, A. D. 1900, in a suit in which Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Bendixen, Jas. H. Nelson, M. O. Siversen, F. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry M. Wetherbee are libelants against the said Wilder Steamship Company as libelee, and ordering the said Wilder Steamship Company to pay the said libelants the sum of fifty-five thousand dollars in lawful money of the United States, with interest thereon at the rate of six per cent. per annum and their costs and disbursements in said action contained, taxed at $623.60;

That from said judgment be deducted the sum of $550 realized from the sale of the wreck of the "*William Carson*," less the amount of the costs of said sale, taxed by the said clerk at the sum of $180.75, making the total of said deduction the sum of $369.25, and the total amount of the judgment awarded the sum of $54,630.75, with interest, as aforesaid, from May 1st, 1900, and the sum of $623.60 costs; and

Whereas the said Wilder Steamship Company desire during the progress of such appeal to stay the execution of the said decree of the supreme court of the Territory of Hawaii:

Now, therefore, if the above-named appellant, The Wilder Steamship Company, shall prosecute the said appeal with effect and pay all costs which may be awarded against it as such appellant if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States circuit court of appeals for the ninth circuit of this cause, all on the mandate of said court by the court ap-

pellate, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

WILDER STEAMSHIP Co., *Principal,*
By its duly appointed agent-in-fact—
(Sig.) S. R. ROSE.
(Sig.) W. C. WILDER, *Surety.*
(Sig.) WM. G. BRASH, *Surety.*

Subscribed and sworn to before me this 9 day of November, 1900.

[SEAL.] S. R. JEHU,
Notary Public, First Judicial Circuit.

(Endorsed): U. S. C. C. of app. Hind *et al. vs.* Wilder's S. S. Co. Bond.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing to be full, true, and correct copies respectively of the petition and stipulation for approval of bond, etc., stipulation as to bond, and bond staying execution, on file and of record in the cause entitled The Wilder's Steamship Company, etc., appellant, *vs.* George U. Hind *et al.*, No. 662, as the same appear and remain of record in my office.

Attest my hand and the seal of said circuit court of appeals, at San Francisco, California, this 2nd day of April, A. D. 1901.

F. D. MONCKTON, *Clerk,*
By MEREDITH SAWYER,
[SEAL.] *Deputy Clerk.*

10c. revenue stamp.

EXHIBIT B.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

THE WILDER'S STEAMSHIP COMPANY (a Hawaiian Corporation), *Appellant*,
vs.
GEORGE U. HIND ET AL., *Appellees*.
} No. 662.

Paul Neumann, Henry Eickhoff, and Curtis H. Lindley for the appellees.

Kinney, Ballou & McClanahan, and Nathan H. Frank for the appellants.

Before Gilbert, Ross, and Morrow, circuit judges.

GILBERT, *Circuit Judge*, delivered the opinion of the court:

The question presented in this case is whether this court has jurisdiction to entertain an appeal from the supreme court of the Territory of Hawaii in an admiralty case. The suit was begun by filing a libel in admiralty in the circuit court of the first circuit, Hawaiian islands, island of Oahu, on February 9, 1900. The case was heard in that court upon April 9 and was decided on May 7, 1900, and thereupon, upon that date, was appealed to the supreme court of the Hawaiian islands, in which court a final decree was rendered on November 9, 1900, whereupon notice was given of appeal therefrom to this court. The Territory of Hawaii was created by the act of Congress approved April 30, 1900, entitled "An act to provide a government for the Territory of Hawaii." By its terms the act was to take effect forty-five days after the approval thereof. The provisions of the act which may be said to relate to the question which is presented in this case are the following:

"SEC. 2. That the islands acquired by the United States of America under an act of Congress entitled 'Joint resolu-

tion to provide for annexing the Hawaiian islands to the United States,' approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

"SEC. 3. That a territorial government is hereby established over the said Territory, with its capital at Honolulu, on the island of Oahu.

"SEC. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: * * *

"SEC. 6. That the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.

"SEC. 7. That the Constitution of the Republic of Hawaii and the laws of Hawaii, as set forth in the following acts, chapters, and sections of the civil laws, penal laws, and session laws, and relating to the following subjects, are hereby repealed."

(Here follows a list of the laws repealed. Among the laws so repealed are the laws of the former Republic relating to jurisdiction in maritime matters.)

"SEC. 10. That all rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this act shall continue to be as effectual as if this act had not been passed; * * * All criminal and penal proceedings then pending in the courts of the Republic of Hawaii shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii; all such proceedings, all actions at law, suits in equity, and other proceedings then pending in the courts of the Republic of Hawaii shall be carried on to final judgment and execution in the corresponding courts of the Territory of Hawaii."

Chapter IV provides a judiciary for the Territory and establishes the jurisdiction of the several courts composing the same. Section 86 provides as follows:

"SEC. 86. That there shall be established in said Territory a district court to consist of one judge, who shall reside therein and be called the district judge. * * * Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court; and said judge, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States. Writs of error and appeals from said district court shall be had and allowed to the circuit court of appeals in the ninth judicial circuit in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeals as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."

It is contended that the present appeal, being an appeal in an admiralty case, is not comprehended within the terms of the Hawaiian statute regulating appeals from the supreme court of the Territory, but that it is one of the cases referred to in section 15 of the act of March 3, 1891, establishing the circuit court of appeals and conferring jurisdiction upon that court over appeals from and writs of error to the courts of the Territories. Upon consideration of the various provisions of the act providing a government for the Territory of Hawaii we are convinced that Congress intended thereby to establish in that Territory between the Federal court created by the act and the system of territorial courts then existing and substantially by the act perpetuated the relation which exists between the courts of the United States and the State courts in the various States. It is not disputed that Congress

had the power to create in the Territory of Hawaii such a system of courts and to establish such a relation between them. The purpose to do so is manifest from various provisions of the act. By section 10 it was declared that all rights of action, suits at law and in equity, and other proceedings then pending in the courts of the Republic of Hawaii should be carried on to final execution and judgment in the corresponding courts of the Territory of Hawaii. Conceding that cases in admiralty are a class of cases separate and distinct from all others, and that the Constitution extends the judicial power of the United States over three distinct classes of controversies, one of which is "all cases of admiralty and maritime jurisdiction," and that it is true, as stated in the language of Chief Justice Marshall in American Insurance Company *vs.* Canter, 1 Peters, 545, that the Constitution contemplates these as three distinct classes of cases and "the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two," still, we think, it is clear from the language of section 10 that Congress intended to make a general provision in regard to all classes of suits and actions of whatsoever nature then pending in the courts of the Republic of Hawaii and to exclude none whatever. The words "and other proceedings" are sufficiently comprehensive when used in connection with the language which precedes them to include admiralty suits. The present suit was a case pending in the courts of the Republic of Hawaii both at the date when the act was approved and when the act went into effect. It proceeded in those courts to a final judgment of the supreme court of the Territory. In section 86 we have the clearly expressed purpose of Congress to provide that the laws of the United States relating to appeals, writs of error, removal of causes and other proceedings as between courts of the United States and the courts of the several States shall govern in like matters and proceedings as between the Federal court and the territorial courts of the Territory of

Hawaii. This can only be construed to mean that final decisions of the supreme court of the Territory of Hawaii may be reviewed in a court of the United States only in such cases and upon such conditions as the decisions of the supreme court of a State might be thus reviewed, or, in other words, that no appeal shall lie to any United States circuit court of appeals from the final judgment of the supreme court of the Territory of Hawaii, and that the only appeal from such territorial court shall be to the Supreme Court of the United States, and only in such cases as are appealable to that court from the supreme court of a State. The right of appeal is statutory. If it exists in the present case, it must be found in the letter of the law. We are asked to apply to the statute certain rules of construction; but the language employed is not involved or ambiguous. Its meaning is evident upon the first reading. We must be guided by its plain import. We find therein nothing to authorize the appeal which is here attempted to be taken. If Congress had established in the Territory of Hawaii a system of territorial courts only, an appeal from the decision of the highest court of the Territory would, of course, be reviewable in the United States circuit court of appeals under the provisions of the act creating the latter court. But, in this instance, Congress has created two systems of courts—one a district court for the jurisdiction of Federal causes, the other for the trial of all other cases. It has provided specially for appeal to this court from the decisions of the district court. It has made no such provision for appeal from the final decision of the territorial court, but has enacted a general statute, the intention of which and the purport of which was to place the supreme court of the Territory upon the basis of the supreme courts of the States in all matters which concern their relation to the courts of the United States. The system of courts created by the act for the Territory of Hawaii differs radically from the system of courts which Congress had theretofore created for any of

the Territories. In no other Territory has there been a division of jurisdiction between cases which properly belong to courts of the United States and other cases. Congress found in the Republic of Hawaii a system of courts already established whose jurisdiction was complete, and from the highest tribunal of which there was no appeal. To that system Congress by the act added a district court, conferring upon it the jurisdiction which pertains to the district and circuit courts of the United States, and providing for removing to that court from the territorial courts causes which under the removal acts were removable from a State court to a court of the United States. The fact that the present case is a suit in admiralty, and as such would have been within the jurisdiction of the district court created by the act if it had been commenced after the date when the act went into effect, cannot affect the question which is before us. The case is purely one of the construction of the terms of the act. We might have disposed of the application to allow the appeal by referring to the fact that the Supreme Court has not assigned to this court appeals from the Territory of Hawaii; but we have preferred to meet the question upon the broader ground above indicated. The motion for the allowance of the appeal must be denied.

(Endorsed:) Opinion. Filed April 1, 1901. F. D. Monckton, clerk.

At a stated term, to wit: the October term A. D. 1900 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday the first day of April in the year of our Lord one thousand, nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

THE WILDER'S STEAMSHIP COMPANY (a Hawaiian Corporation), *Appellant*,
vs.
GEORGE U. HIND, C. A. SPRECKELS, RUDOLPH SPECKELS, G. WEMPE, WILLIAM CARSON, H. D. BENDIXEN, JAMES H. NELSON, M. O. SIVERSEN, F. O. JOHANSEN, GEORGE A. NELSON, N. J. MCLEOD, G. M. FAGERLUND, J. S. HELLINGSEN, JOHN PILTZ and HENRY M. WETHERBEE. } No. 662.

This cause heretofore submitted to the court for consideration and decision upon the petition and motion of the appellant for the allowance of an appeal to this court and for the approval of a bond on appeal having been duly considered and an opinion having been filed,

It is ordered that said petition and motion be, and the same are hereby denied.

(Endorsed:) Order denying petition and motion for appeal, &c. Filed April 1, 1901. F. D. Monckton, clerk.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing to be a full, true and correct copy of an opinion and order denying petition and motion for an appeal, &c., filed in the above-entitled cause as the originals thereof remain and appear of record in my office.

Attest my hand and the seal of said circuit court of appeals at San Francisco, California, this 2nd day of April, A. D., 1901.

[SEAL.] F. D. MONCKTON, *Clerk*.

10c. revenue stamp.